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No. 664.

IN THE

Supreme Court of the United States

October Term, 1960.

RAYMOND COHEN, JOSEPH E. GRACE, EDWARD BATTISFORE and EDWARD WALKER,

Petitioners,

v.

HIGHWAY TRUCK DRIVERS AND HELPERS, LOCAL 107, OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, an Unincorporated Association, by THOMAS GRAHAM, CARMEN GRASSO, ANTHONY HNIZDO, JR., KARL M. JENSEN, JOHN C. JONES, EDWARD P. McCORMICK, JOHN REGAN, WILLIAM D. STASEN and ROBERT D. THOMAS, Trustees Ad Litem,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF OF RESPONDENT IN OPPOSITION.

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CITATIONS TO OPINIONS BELOW.

The opinion of the District Court (A. 59a) has been reprinted in Appendix B to the Petition and is reported at 182 Fed. Supp. 608. The opinion of the Court of Appeals, which has been reprinted as Appendix C to the Petition, is reported at 284 F. 2d 162.

The portion of the order of the District Court, from which Petitioners originally appealed, was not reprinted as part of the Petition for Writ of Certiorari. It has therefore been reprinted as Appendix I to this Brief, at page 18 *infra*.

JURISDICTION.

The Petition seeks to base the jurisdiction of this Court upon 28 U. S. C. §1254 (1), but the Petition does not set forth as a reason why certiorari should be granted any of the considerations described in Supreme Court Rule 19 (other than that the courts below committed error). It is respectfully submitted that none of the considerations governing review on certiorari apply to the present case, and that the Petition should be dismissed for that reason.

QUESTIONS PRESENTED.

1. Is it not a violation of the fiduciary duty imposed upon officers of labor unions by Section 501 (a) of the Labor Management Reporting and Disclosure Act of 1959 for these officers to use funds which belong to the Union for

the purpose of paying attorneys to defend these same officers against serious criminal and civil charges of offenses against the funds, property and members of the Union itself, while the charges are still pending, and before the officers have been exonerated?

2. Is the use of money belonging to the Union to pay counsel fees for the accused officers made any less of a breach of fiduciary duty because the officers spent it on themselves after a meeting of the general membership of the Union approved the expenditure by a majority vote over the objections of a minority, particularly when there was no advance notice to members of the Union that the resolution would be voted upon, and the total number of members in attendance at the meeting was approximately 2,000 out of a total membership of 13,000?

STATEMENT.

This case arose as a civil action, brought by members of Highway Truck Drivers and Helpers, Local 107, an unincorporated labor union affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. These members sued as trustees ad litem, on behalf of the entire local Union, under the provisions of Section 501 (b) of the Labor Management Reporting and Disclosure Act of 1959. The defendants are four officers of Local 107 and a former business agent of the Local.

Most of the paragraphs of the Complaint are devoted to allegations that the individual defendants misappropriated very large sums of money belonging to Local 107 for their own personal use and for the use of others. Many different

forms of misappropriation are alleged, among them forged endorsements on checks, the drawing of checks to cash without any accounting of the way in which the money was used; kickbacks to the officers from suppliers who sold goods or services to the Union; and payments to the officers themselves for services which were not performed (A. 1b to 11b).

Out of these alleged misappropriations by the five defendants, together with other accusations that the defendants and others intimidated individual members of the Union and encouraged the commission of assaults, batteries and other offenses, have grown a whole series of legal proceedings. There are actually six such law suits, and they are described in Exhibit "G" to a Stipulation of counsel (A. 29a). In order, these six law suits are as follows:

1. A criminal indictment obtained by the District Attorney of Philadelphia County which charges that seven officers and employees of Local 107 conspired to cheat and defraud Local 107;

2. A petition for a writ of habeas corpus in the state court brought by the same seven officers and employees of Local 107, attacking the criminal indictment;

3. A petition filed by nine individual officers and employees of Local 107 in the Supreme Court of Pennsylvania seeking a writ of prohibition to prevent the convening of a grand jury to inquire into the charges against the officers of Local 107;

4. A complaint in equity filed in the state court by the officers of Local 107 to restrain the convening of a hearing panel of the International Brotherhood of Teamsters, which sought to inquire into the same group of charges against the officers;

5. The filing of Civil Action No. 27053 for a civil accounting and for other relief, which is the present case in the District Court;

6. A previous appeal to the Court of Appeals, No. 13,087, arising out of the same Civil Action.

On September 20, 1959, a regular monthly meeting of the general membership of Local 107 was held. Local 107 has a total membership of approximately 13,000 (A. 20a). Approximately 2,000 of these members appeared at the meeting (A. 20a). The members of Local 107 had no advance notice before the meeting that any special resolution would be introduced (A. 15a, 18a). At the meeting a certain resolution was presented and was approved by a majority vote, although at least five or six votes were cast in opposition to the resolution (A. 18a). The resolution, which appears as Exhibit "F" (A. 28a), purported to authorize the expenditure of funds belonging to Local 107 to pay counsel fees and other costs of defending the officers of the Union who had been charged with the civil and criminal offenses described above.

Within a period of 35 days after the adoption of the Resolution of September 20, bills for legal services and legal costs in the total sum of $24,921.40 were presented to the officers of Local 107 by Samuel Dash, Esquire, and by the law firm of Dash and Levy, counsel for the accused officers, and these bills were paid in full out of funds belonging to Local 107 (A. 25a to 27a). It has been stipulated that these bills covered legal services and costs for the representation of officers of Local 107 in all six of the specified law suits listed in Exhibit "G", as described above (A. 24a).

On March 24, 1960, Judge Clary, in the Court below, issued an Order, paragraph five of which enjoined and restrained the defendants Cohen, Grace, Battisfore and Walker

from further using any of the funds of Local 107 "to pay for any legal fees in the defense of civil or criminal actions presently pending against them in the Courts of the Commonwealth of Pennsylvania and in this Court arising out of the alleged misuse of the funds of said Local 107 . . ." (p. 18 this Brief).

It is from this injunction that four of the five defendants appealed. After the Courts of Appeals, in a per curiam opinion, affirmed the District Court, the same four defendants filed the present Petition for a Writ of Certiorari.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED.

I. *The Use of Funds Belonging to Local 107 to pay counsel fees to defend the accused officers is to use the funds of the union for an improper purpose, since the officers stand accused of offenses against the union itself.*

The officers of Local 107 have already spent $24,921.40 of the Local's funds toward counsel fees and other costs in their strenuous efforts to exculpate themselves from the charges that they had misused large sums of money belonging to their own labor union, Local 107. But the officers breach their fiduciary duty toward the members of Local 107 by using the funds of the union in this way.

There is a precise analogy in corporate stockholders' derivative suits, in which individual shareholders, acting for the corporation, may themselves sue the officers or directors for breaches of trust. See Ballantine, *Corporations* (1946), Chapter XI. In these derivative suits, the corporation is required to be entirely neutral or passive while the litigation is going on, and must not favor either side. The battle

is limited to the suing shareholders and the defending officers. See Ballantine, *op. cit.*, at p. 366. It therefore follows that the officers-defendants may not use the funds of the corporation to defend themselves while the litigation is going on. And this is a fiduciary duty, so that no mere majority vote of either the directors or the shareholders is permitted to change it. The law has been developed in the following leading cases and law review articles: *Solimine v. Hollander*, 129 N. J. Eq. 264, 19 A. 2d 344 (1941); In re *Dissolution of E. C. Warner Co.*, 232 Minn. 207, 45 N. W. 2d 388 (1950); *New York Dock Co., Inc. v. McCollum*, 173 Misc. 106, 16 N. Y. S. 2d 844 (1939); *Jesse v. Four Wheel Drive Auto Co.*, 177 Wisc. 627, 189 N. W. 276 (1922); *Meyers v. Smith*, 190 Minn. 157, 251 N. W. 29 (1933); Comment, *Corporate Responsibility for Litigation Expenses of Management*, 40 Calif. L. Rev. 104 (1952) (in which the various State statutes are collected); Washington, *Litigation Expenses of Corporate Directors in Stockholders' Suits*, 40 Col. L. Rev. 431 (1940).

There is a similar concept in the law of trusts. By well recognized trust law the trustee is not entitled to counsel fees when his actions have caused a loss to the cestui. See 4 Bogert, *Trusts and Trustees*, pp. 970-972 (1948).

These same principles of fiduciary responsibility, as developed in the law of corporations and trusts, apply with equal force to unincorporated associations, including labor unions. The usual theory is that each member has a property interest in the assets of the union, since he contributed to them with his membership dues, and also has a contractual right, arising from the Constitution and By-laws of the union, to have the assets of the union used only for the purposes for which the union was organized. As a result, the rights of dissenting or minority union members must be kept in mind and cannot be overridden by a majority vote of the other members, who may wish to use

the assets or funds of the union for a purpose not germane to the purposes for which the union was organized. See *West Virginia Pulp and Paper Co. v. Lewis*, 17 N. Y. Misc. 2d 94, 191 N. Y. S. 2d 303, aff'd without opinion, 8 App. Div. 2d 899, 187 N. Y. S. 2d 1002 (1958); *Williams v. Masters, Mates & Pilots of America*, 384 Pa. 413, 120 A. 2d 896 (1956); *Maloney v. United Mine Workers of America*, 308 Pa. 251, 162 A. 225 (1932); *Leatherman v. Wolf*, 240 Pa. 557, 88 A. 17 (1913); *Bacon v. Paradise*, 318 Mass. 649, 63 N. E. 2d 571 (1945); *Underwood v. Maloney*, 152 F. Supp. 648 (E. D. Pa. 1957).

There are also two English cases precisely in point. In both of these cases, English courts refused to permit funds of a labor union to be spent to pay for the personal legal expenses of union officers, even after the union had authorized the expenditure by majority vote of the appropriate governing body. The proposed expenditures were *ultra vires*. *Alfin vs. Hewlett*, 18 T. L. R. 664 (1902); *Oram v. Hutt* (1914), 1 Ch. 98. The expenditure in the case of Local 107 is similarly *ultra vires*. As Judge Clary points out in his opinion (Pet. p. 27) the Constitution of the International Brotherhood of Teamsters contains no provision to authorize the use of union funds for counsel fees for officers.

There is no logical reason whatever why officers of a labor union should owe less of a duty toward their members than the officers or directors of a corporation owe to their shareholders, and even the appellants in the present case do not openly make this argument. Indeed, there is one excellent reason why the officers of a labor union owe a *higher* degree of care in handling union dues receipts than corporate officers owe with respect to corporate funds.

In the case of labor unions subject to the provisions of the National Labor Relations Act, union members are actually required by the force of federal law, to pay dues to

the union in order to keep their jobs. This is true by virtue of Sections 7 and 8 (a) (3) of the National Labor Relations Act (29 U. S. C. A. §§157 and 158 (a) (3)), which specifically permit collective bargaining agreements to require union membership (after 30 days) as a condition of employment, with the further requirement (in the second proviso of §8 (a) (3)) that the employee must continue to pay regular dues to the union in order to keep his job. This kind of forced dues payment may be justified by requiring that all employees who benefit from the bargaining power of the union in negotiation with management contribute to the union's financial support, but there is also an increased duty imposed on the union officers to spend the same dues money only for purposes of collective bargaining and not for their own personal gain. This duty is so important that there is actually a Constitutional issue of due process involved. See *Railway Employees Dept. v. Hanson*, 351 U. S. 225 at 234 and 238 (1956), and *International Association of Machinists v. Street*, 108 S. E. 2d 796 (Ga. 1959), probable jurisdiction noted, 361 U. S. 807 (1959), reargument ordered, 363 U. S. 825 (1960).

II. *Every one of the six actions in which union money is sought to be used to defend the accused officers involves accusations that the officers violated their fiduciary duties toward Local 107.*

A major argument set forth in the Petition is that the union, as well as the officers, has been accused of improper acts, so that the expenditure of union funds to defend the accused officers is proper. Petitioners' Statement, in particular, emphasizes this point.

In the case of five of the six law suits this is patently not so. In all five of these actions the accusations are directed

against the defaulting officers only, and the Union is either not involved at all or would actually benefit from the remedies sought.

It is only in the case of the writ of prohibition to stop the proposed grand jury investigation (Supreme Court of Pennsylvania, October Term 1959, No. 11) that the Petitioners are able to find some language to indicate that the union itself stands accused, together with its officers. But a fair reading of all of the documents even in this one action indicates that the grand jury was being convened primarily to investigate the actions of the officers of the Local, as distinguished from the union itself. Certainly a reading of District Attorney Blane's Petition, which was the entire basis for the proposed grand jury investigation, confirms this (A. 40a-45a).

Secondly, the entire argument about the use of union funds to oppose the grand jury investigation has nothing to do with the present Petition at all. The Petition for Certiorari has been brought to review the decision of the Court of Appeals affirming the provisions of Paragraph Five of Judge Clary's Order of March 24, 1960. And Paragraph Five enjoins only the *further* use of union funds to pay for all legal fees in the defense of civil or criminal actions presently pending against the officers either in the courts of the Commonwealth of Pennsylvania or in the Federal District Court (A. 73a, reprinted at p. 18 of this Brief). The grand jury action is not presently pending. The writ of prohibition stopping it was issued by the Supreme Court of Pennsylvania on October 5, 1959. See the opinion of the Pennsylvania Supreme Court reported as *The Matter of the Petition of Grace*, at 397 Pa. 294, 154 A. 2d 592.

III. *Section 501 of the Labor Management Reporting and Disclosure Act incorporates into Federal Law the fiduciary duties of officers of labor unions engaged in interstate commerce.*

The new Labor Management Reporting and Disclosure Act of 1959 (29 U. S. C. A. 401 et seq.) establishes for the first time a comprehensive statutory scheme regulating the relationships between the general membership of labor unions engaged in collective bargaining in interstate commerce and the officers of these same unions. The reason behind the passage of this new Act is no secret, as Judge Clary points out in his Opinion in the District Court (Pet. App. p. 23). The new Act was designed to prevent the recurrence of the widespread examples of corruption of labor union officers which had been pointed out in the extensive hearings conducted by a Senate Select Committee, headed by Senator John B. McClellan of Arkansas in 1957, 1958 and 1959. The new collective bargaining rights which employees and their unions had gained under the original Wagner Act and the Taft-Hartley Act, had greatly increased both the number of unionized employees in interstate commerce and the power which officers of the unions held over individual employees and over the funds of the unions created by required membership dues. The McClellan Committee hearings pointed up a sorry state of affairs in many unions in which the officers had proceeded to help themselves personally to moneys which belonged to the union and had threatened and intimidated individual members of unions who opposed this racketeering kind of leadership. It is significant that an important part of the testimony before the McClellan Committee has to do with the activities of the officers of Local 107, which is the union involved in the present case. (See Hearings before Select Commit-

tee on Improper Activities in the Labor or Management Field, 85th Congress, 2nd Session, Parts 27 and 28, pp. 10385-11185, and Senate Report No. 621, Part 2, 86th Cong. 1st Sess. at pp. 377 to 517.)

Section 501 of the new Act (29 U. S. C. A. §501) deals specifically, as its title states, with the "Fiduciary Responsibility of Officers of Labor Organizations." Section 501(a) then sets out these responsibilities in detail, and several of these responsibilities bear directly on the use of union funds to pay the litigation expenses of officers accused of looting the union treasury for their own personal gain. Consider the following, all from Section 501:

> (1) "to hold its money and property solely for the benefit of the organization and its members . . ."

This clause specifically incorporates the "union purpose" limitation on expenditures into the new fiduciary duties of labor union officers. All expenditures which do not have a union purpose are prohibited. And an expenditure for counsel fees for accused officers is not a "union purpose", as has already been demonstrated.

> (2) "to refrain . . . from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization . . ."

Certainly officers who receive money from the union itself with which to defend themselves against both civil and criminal charges that they have been embezzling from the union are by that very act "acquiring (a) pecuniary or personal interest which conflicts with the interests" of the union.

> (3) ". . . a general exculpatory resolution of a governing body purporting to relieve any such person of

> liability for breach of the duties declared by this section shall be void as against public policy."

This portion of Section 501(a), which appears at the very end of the section, also prohibits the resolution adopted by the membership of Local 107. A simple reading of the Resolution makes clear how it "exculpates" the officers. Not only does the Resolution itself state that the charges are unfounded ("false as far as we are concerned"), but goes on to extend positive financial help to the officers to fight the charges. The Resolution therefore not only declares the officers innocent, but goes right on to back up its words with an unlimited amount of money for the officers' defense. It is difficult to imagine a more perfect exculpation.

It is of course true that Section 501(a) also contains another clause, which requires the officers

> "to manage, invest, and expend the same [the funds of the union] in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder . . ."

And it is upon this clause that the Petitioners rely. But it is plain that a statute must be construed with respect for all of its parts, and Petitioners in their Argument have omitted even to consider the commands of all of the other clauses of Section 501(a). And it is these other clauses, three of which have just been quoted, that emphasize the fiduciary nature of the duties now imposed upon union officers by the new statute. There is no reason to permit Petitioners to select out of Section 501(a) the clause which they like and to act as if the other clauses do not exist at all.

It is also significant that in the similar corporate shareholders' derivative actions (previously cited) it has been

repeatedly decided that directors may not use the corporation's funds to defend themselves, even if a majority vote of directors or shareholders authorizes them to do so. And this is true even though corporate directors are under a similar legally imposed duty to spend the funds of the corporation "in accordance with . . . resolutions of the governing bodies . . .." There is no reason why labor unions should be different, and Petitioners have not even argued that they should.

Finally, the legislative history of the new Act emphasizes the similarity of the fiduciary duties imposed upon union officers to the previously recognized responsibilities of other fiduciaries known to the law. The clearest example of this appears in the actual Labor Committee Report which accompanied H. R. 8342 (an earlier version of the present Act) to the floor of the House of Representatives. That Report makes the following specific comparison:

> "For centuries the Law of Fiduciaries has forbidden any person in a position of trust subject to such law to hold interests or enter into transactions in which self-interests may conflict with complete loyalty to those whom he serves. Such a person may not deal with himself, or acquire advance interests or make any personal profit as a result of his position. This same principle has long been applied to trustees, to agents, and to bank directors. *It should be equally applicable to Union officers and employees.* The ethical practices code of the American Federation of Labor and Congress of Industrial Organizations states:
>
> 'It is too plain for extended discussion that a basic ethical principle in the conduct of union affairs is that no responsible trade union official shall have a personal financial interest which conflicts with the full performance of his fiduciary duties as a workers' representative.'

"Section 501 of the Committee Bill provides that the officers, agents, shop stewards, and other representatives of labor organizations occupy positions of trust in relation to such organization and its members as a group." (Italics added.)

(From House Report No. 741, reprinted in U. S. Code Congressional and Administrative News, 86th Congress, First Session, at page 2433.)

In their Argument, Petitioners have not mentioned the existence of House Report No. 741, but have instead quoted from three speeches delivered in the Senate and in the Congress by Senator McClellan, Senator (now President) Kennedy, and Congressman O'Hara. But the Reports of legislative committees are entitled to more weight than speeches of individual legislators' in determining Congressional intent. See *United States v. International Union United Automobile Workers*, 352 U. S. 567 at p. 585 (1957).

To sum up, both the actual wording of Section 501(a) and the accompanying legislative history support the decisions already arrived at by both the District Court and the Court of Appeals. Both the words and the purpose of the statute have been properly and effectively served by the present injunction, which ought to be upheld.

IV. *The provisions for criminal penalties which were contained in the Kennedy-Ives Bill (S.1555) were eliminated when the entire Kennedy-Ives Bill was rejected in conference in favor of the Griffin-Landrum Bill, which adopted an entirely different approach of civil remedies for breaches of fiduciary duty.*

As their final point, Petitioners present an argument based upon the Senate version of labor reform legislation,

the Kennedy-Ives Bill (S. 1555), which contained a provision for criminal penalties for any union officer who used union funds to finance the defense of an accused officer. Since this provision does not now appear in the final Act, Petitioners argue that Congress considered all sanctions against this kind of financial assistance, and decided that none at all should be used in this situation.

This argument carefully omits the differences between the Senate and House versions of proposed labor reform legislation. The Senate bill (Kennedy-Ives) was very different from either the House Committee Bill (H. R. 8342) or the Landrum-Griffin Bill (H. R. 8400-8401) which replaced it, because Kennedy-Ives had no provisions at all which imposed fiduciary duties on officers of unions. Officers were not declared to hold "positions of trust" or to be fiduciaries, and there was no provision for civil suits by members against their officers, except after the officers had been convicted of embezzlement. See the Senate minority Committee Report to accompany S. 1555, U. S. Code Congressional and Administrative News, 86th Cong., 1st Session, at p. 2376.

On the contrary, both the House Committee bill and the Landrum-Griffin Bill which replaced it on the floor of the House contained the extensive provisions for imposing fiduciary duties on union officers and providing for civil suits by members, as are now embodied in Section 501(a) of the Act. It was only when this change in approach from the purely criminal sanctions of Kennedy-Ives to the civil fiduciary remedies of the House Bills took place that the provision for criminal penalties for using union funds to defend accused officers was dropped.

The proper conclusion from this is quite different from what Petitioners urge, and is really that the criminal penalties for using union funds to defend accused officers has been replaced by the civil fiduciary provisions of Section

501 (a), and that any officer who uses union funds in this way may be sued by rank-and-file members acting as trustees for the union, as is true in the present civil action.

CONCLUSION.

Petitioners have not made out a case for the granting of a writ of certiorari. There is no conflict of opinions between circuit courts, and the decision of the Court of Appeals for the Third Circuit in the present case is a correct application of both the wording and the spirit of the new labor reform Act. Respondents therefore respectfully request that the Petition for a Writ of Certiorari be denied, and the decisions of the District Court and the Court of Appeals be permitted to stand.

Respectfully submitted,

EDWARD B. BERGMAN,
Counsel for Respondent.

APPENDIX I.

Excerpts from Order.

And now, to wit, this 24th day of March, 1960, for the reasons set forth in the Opinion filed concurrently herewith, it is

Ordered, Adjudged and Decreed

* * * * * * * * *

5. That defendants, Raymond Cohen, Joseph E. Grace, Edward Battisfore and Edward Walker, individually and as officers of Local 107, be and they are hereby severally and jointly enjoined and restrained from further using any of the funds of Highway Truck Drivers and Helpers Local 107, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an unincorporated association, to pay for any legal fees in the defense of civil or criminal actions presently pending against them in the Courts of the Commonwealth of Pennsylvania and in this Court arising out of the alleged misuse of the funds of said Local 107, either pursuant to the Resolution of September 20th, 1959, referred to in the body of the Opinion, or otherwise.

Further, because of the many questions which have arisen in connection with the interpretation of the aforesaid Act, the Court specifically retains jurisdiction to determine at a future date the question of ordering reimbursement by the said remaining defendants to the Union of the funds for

legal fees already expended in their behalf, at least pending appellate review of the injunction here entered. This injunction shall remain in force and effect until further order of this Court and the Court retains jurisdiction for the purpose of entering any and all further orders necessary to carry into effect the terms of this injunction upon application of any of the parties hereto.

By the Court:

THOMAS J. CLARY,
J.